

Subject: Petition For Rulemaking – Highlands Water Protection and Planning Act Rules; NJAC 7:38-2.3(a)7. - Exemptions

PETITION FOR RULEMAKING – Submitted VIA EMAIL

This petition for rulemaking is submitted in accordance with the NJ Administrative Procedure Act and in substantial compliance with NJAC 7:1D-1 PETITIONS FOR RULES,

December 6, 2024

Shawn LaTourette, Commissioner
New Jersey Department of Environmental Protection
401 East State Street
P.O. Box 402
Trenton New Jersey 08625

Re: Petition for Rulemaking

Petition for DEP rules to delete the phrase "[public lands]" and restrict the scope of Exemption 7 of the Highlands Act to private lands

• Authority: DEP power to grant rulemaking petition: N.J.S.A. 13:1B-1 et seq; N.J.S.A. 13:1D-1 et seq; and THE HIGHLANDS WATER PROTECTION AND PLANNING ACT, N.J.S.A. 13:20-1 ET SEQ.

Dear Commissioner LaTourette:

Please accept this letter petition for rulemaking pursuant to N.J.S.A.52:14B-1 et seq.

This letter petition is filed pursuant to N.J.S.A. 52:14B-4, which provides that:

“(f) An interested person may petition an agency to adopt a new rule, or amend or repeal any existing rule. Each agency shall prescribe by rule the form for the petition and the procedure for the submission, consideration and disposition of the petition. The petition shall state clearly and concisely:

- (1) The substance or nature of the rule-making which is requested;
 - (2) The reasons for the request and the petitioner’s interest in the request;
 - (3) References to the authority of the agency to take the requested action.”
- I) Rule-Making requested and the petitioner’s interest in it

Bill Wolfe is a citizen, former DEP professional and member of Gov. McGreevey's Highlands Taskforce. While at DEP, Wolfe represented the DEP Commissioner as a member of the Office of Legislative Service legislative team that drafted the Highlands Act. Wolfe has long been active in promoting the protection of public health and the environment, including via submissions of petitions for rulemaking to force agency action.

NJ Forrest Watch is a citizen based group that seeks to protect NJ forests and advocate for responsible and ecologically minded forestry practices on our public lands.
<https://www.savespartamountain.org/>

We request that the Department promulgate regulations to:

- 1) delete the text "[for public lands]" used in NJAC 7:38-2.3(a)7.
- 2) amend NJAC 7:38-2.3(a)7. to restrict the scope of Exemption #7 of the Highlands Act to privately owned lands.

II) Rationale for the request

1. The Department's implementing regulations at NJAC 7:38-2.3(a)7. are broader in scope and contradict the text of exemption #7 of the Highlands Act. The subject regulatory text is ultra vires.
2. The Department's implementing regulations at NJAC 7:38-2.3(a)7 conflict with the legislative intent of Exemption #7 of the Highlands Act.
3. The Department's implementing regulations at NJAC 7:38-2.3(a)7 conflict with the legislative findings, intent, fundamental purposes, objectives, policies, and standards of the Highlands Act.

Specifically, NJSA 13:20-28(a)7, hereafter exemption #7 of the Highlands Act, states the following:

"(7) an activity conducted in accordance with an approved woodland management plan pursuant to section 3 of P.L.1964, c.48 (C.54:4-23.3) or a forest stewardship plan approved pursuant to section 3 of P.L.2009, c.256 (C.13:1L-31), or the normal harvesting of forest products in accordance with a forest management plan or forest stewardship plan approved by the State Forester;"

https://www.nj.gov/dep/landuse/download/13_20.pdf?_gl=1*1abi6uv*_ga*MTk4OTkxNTU1Ni4xNzMyMjA0NTQ3*_ga_S1CYQ2VWQ5*MTczMzQxODgxMy4yLjEuMTczMzQxOTYwNC4wLjAuMA..

The explicit legislative text and legislative intent clearly apply only to activity conducted on private lands.

At the time of enactment, woodland management plans pursuant to section 3 of P.L.1964, c.48 , forest stewardship plans approved pursuant to section 3 of P.L.2009, c.256, forest management plans, and forest stewardship plans that were prepared for and approved by the State Forester were limited to private lands.

The Legislature wrote the text of exemption #7 and used the terms "woodland management plans" and "forest stewardship plans" and "forest management plans" and "forest stewardship plans", including citations to prior laws that applied exclusively to private lands, not public lands.

The term "public lands" is NOT included in the text of exemption #7.

It is inconceivable that the Legislature intended to exempt "harvesting of forest products" on forested public lands from the policies, standards, and regulatory review procedures of the Highlands Act, as that would directly contradict the fundamental forestry, natural resource, and water resource protections of the Highlands Act.

Had the legislature intended to exempt activities on public lands - a huge policy decision, particularly given the significant acreage of publicly owned forested lands in the Highlands - then they would have made that abundantly clear in the text of the exemption.

The primary legislative intent of exemption #7 was to facilitate the ability of private property owners to receive farmland assessments and local property tax breaks. It was also intended to streamline reviews and avoid duplicative regulatory reviews by the DEP and the State Forester.

However, the statutory text of exemption #7 was altered and greatly expanded in scope by the DEP's implementing regulations, NJAC 7:38.

Specifically, here is the DEP regulatory text for implementing the Act's exemption #7 at NJAC 7:38-2.3(a)7.: (emphasis mine)

"7. Any activity conducted in accordance with an approved woodland management plan issued pursuant to the Farmland Assessment Act, N.J.S.A. 54:4-23.3, or [for public lands,] the normal harvesting of forest products in accordance with a forest management plan approved by the State Forester; "

https://dep.nj.gov/wp-content/uploads/rules/rules/njac7_38.pdf

The Department's insertion of the bracketed term "for public lands" dramatically expands the scope of the exemption to public lands. The Department's original basis and background

document in the original rule proposal that apparently proposed this expanded scope does to public lands not provide a rationale for this huge legal and policy expansion.

I note that the DEP's Highlands rules were last amended in 2009 and readopted without change in October of 2022. I am unable to trace the origin and scientific and legal justifications to support the insertion of the bracketed language "for public lands".

Furthermore, the subject regulation contradicts the legislative text and legislative intent of the Highlands Act.

The Legislature in no way intended to exempt the "harvesting of forest products" and management (logging) on public forested lands in the Highlands from rigorous regulatory and public review and strict regulatory standards designed to protect the natural resources and water resources of the Highlands.

Just the opposite: the legislature passed the Highlands Act to protect Highlands forests, particularly canopy cover and large blocks on contiguous undisturbed forests, which primarily were publicly owned. The Legislature adopted more stringent regulatory standards to protect those forest resources, not broad exemptions from those standards.

In passing the Highlands Act, the Legislature found:

"the New Jersey Highlands contains other exceptional natural resources such as clean air, contiguous forest lands, wetlands, pristine watersheds, and habitat for fauna and flora, includes many sites of historic significance, and provides abundant recreational opportunities for the citizens of the State."

... the existing land use and environmental regulation system cannot protect the water and natural resources of the New Jersey Highlands

The Legislature further finds and declares that the protection of the New Jersey Highlands, because of its vital link to the future of the State's drinking water supplies and other key natural resources, is an issue of State level importance that cannot be left to the uncoordinated land use decisions of 88 municipalities, seven counties, and a myriad of private landowners; that the State should take action to delineate within the New Jersey Highlands a preservation area of exceptional natural resource value that includes watershed protection and other environmentally sensitive lands where stringent protection policies should be implemented; that a regional approach to land use planning in the preservation area should be established to replace the existing uncoordinated system; that such a new regional approach to land use planning should be complemented by increased standards more protective of the environment established by the Department of Environmental Protection for development in the preservation area of the New Jersey Highlands

In light of this legislative intent and the objectives, policies, and regulatory standards in the Highlands Act, the Department has engaged in an absurd interpretation of exemption #7 to apply in a way to exempt public lands from the requirements of the Highlands Act.

The Department's Highlands rules on exemption #7 contradict both the plain language and legislative intent of the Act.

We demand that the Department close the loophole they created.

III) Authority of the agency to take the requested action

The Department is authorized to adopt the requested regulations pursuant to NJSA 13:1B-1 et seq. and NJSA 13:1D-1 et seq. (also known as the Department's "organic authority") and the Highlands Act.

We look forward to your timely and favorable consideration of this petition request. We reserve the right to revise and extend this submission.

Sincerely,

Bill Wolfe
Citizen

Ken Dolsky,
NJ Forest Watch

c: Senator Smith and Senate Environment Committee